IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 4TH APRIL 2007/14TH CHAITHRA 1930

MFA.No. 668 of 2001(B)

(OPMV NO.100/94 IN THE FILE OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, THIRUVANANTHAPURAM)

APPELLANT:ADDITIONAL 7TH RESPONDENT

THE UNITED INDIA INSURANCE CO. LTD.,
REPRESENTED BY ITS DIVISIONAL MANAGER,
DIVISIONAL OFFICE, LMS COMPOUND,
PALAYAM, THIRUVANANTHAPURAM.

BY ADV. SRI.P.V.JYOTHI PRASAD

RESPONDENTS:PETITIONER, 2ND RESPNT & ADDL.RESPNTS 4 TO 6
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1. **MANGALAKUMARI,**
   W/O.LATE BABURAJ,
   BIJU BHAVAN, MADUVATHUVILA,
   NEAR VICTORY HIGH SCHOOL,
   NEMOM.

2. **ABIN B.RAJ @ ACHU,**
   (MINOR) AGED 1 YEAR,
   REPRESENTED BY 1ST PETITIONER,
   MOTHER - DO -.

3. **M.K.SARADAMONI,**
   BIJU BHAVAN, MADUVATHUVILA,
   NEAR VICTORY HIGH SCHOOL,
   NEMOM.

4. **P.PRATHAPAN,**
   THERIVILA, SIVANCOIL ROAD,
   BALARAMAPURAM P.O.

5. **SURENDRAN, S/O.VELAYUDHAN,**
   S.V.VILASOM, VADAKKEVILA,
   BALARAMAPURAM P.O.

6. BHUVANAN, S/O.KAMALASANAN,
KAMALA NIVAS, KIDARAKUZHI,
VENGANOOR DESOM AND VILLAGE

7. DR.N.A.PRASAD,
S/O.ANANDAPPA,
A.J.BHAVAN, UDIYANKULANGARA P.O,
CHENKAL VILLAGE,
NEYYATTINKARA.`

BY ADV. SRI.J.S.AJITHKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/03/2007,ALONG WITH MFA NOS. 669/2001, 690/2001 AND 835/2001 THE COURT ON 04/04/2007 DELIVERED THE FOLLOWING:

MFA NO.668/2001

ORDER IN CMP NO.5601 OF 2001 IN MFA NO.668 OF 2001

DISMISSED

04/04/2007 **SD/-P.R.RAMAN, JUDGE**

SD/-ANTONY DOMINIC, JUDGE

//TRUE COPY//

P.R.RAMAN & ANTONY DOMINIC, JJ.
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M.F.A.Nos.668, 669, 690 & 835 OF 2001
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Dated this the 4th day of April, 2007

J U D G M E N T

Antony Dominic, J.

MFA Nos. 668 and 835 of 2001 arise out of OP (MV) No.100/94 and MFA Nos.669 & 690 of 2001 arise out of OP (MV) No.622 of 1994, on the file of the Motor Accidents Claims Tribunal, Trivandrum. These appeals have been filed by the Additional 4th respondent, the owner of Tempo Van bearing Regn. No.KL 01/2649 and the additional 7th respondent, the insurer of Maruti Car bearing Regn. No.KL 01A/4526. Since the appellants are parties to both OP (MV)No.100/94 and 622/94 and the appeals relate to the same accident, we dispose of the appeals together.

2. The claim petitions were filed following an accident that occurred on 26.10.1993 at about 6.45 p.m. when late Sri.Baburaj was traveling from Trivandurm to Nemom, through the Trivandrum – Neyyattinkara National Highway, on a Scooter bearing Regn. No.KBT 5358, with the petitioner in OP (MV) No.622 of 1994, on the pillion. When they reached near

Karakkamandapam, a Tempo van bearing Reg. No.KL 01/2649 driven by the 2nd respondent hit the Scooter as a result of which both the rider and the pillion rider thrown out on the Road and sustained serious injuries and Sri.Baburaj succumbed to the injuries at the Medical College Hospital. In the above background, the wife and children of Baburaj filed OP (MV) No.100/94 claiming Rs.5 lakhs and Sri.Madhukumar, the pillion rider, filed OP (MV) No.624/94 claiming Rs. 3 lakhs. Subsequent to the filing of the claim petition by order dated 02.12.1997, additional respondents 4 to 7, which includes the appellants herein, were impleaded in these cases on the allegation that the Maruti car of which the 6th respondent is the registered owner and the 7th respondent, the appellant in MFA Nos. 668 and 669 of 2001 was the insurer, was also involved in the accident. According to the claimants, the Maruti car which was coming from behind attempted to overtake the Scooter and turned towards the left side hitting down the scooter in the process. It was stated that while so, the tempo van, of which the appellant in MFA Nos.690 of 2001 and 835 of 2001 is the

registered owner and driven by the 2nd respondent, came from the opposite direction in a rash and negligent manner ran over late Baburaj, resulting in serious injuries and his eventual death.

3. The parties filed their counter statements and oral evidence of PW1 and PW2 were recorded. Exs.A1 to A23 were also marked in evidence. Taking into account the evidence on record the Tribunal by its common award dated 4th December 2000 held that the accident occurred due to the composite negligence of the drivers of both the Maruti Car and Tempo van and apportioned the liability equally. Thereafter, in O.P. (MV) No.100/94 the Tribunal awarded Rs.3,22,644/- with interest at 12% from 19.01.1994 and directed that the amount be paid by concerned respondent equally. In respect of the claimant in OP (MV)No. 622 of 1994, the Tribunal passed an award granting Rs.63,630/-, with interest at 12% from 05.05.1995 to be apportioned in the same manner.

4. It is aggrieved by the common award in OP (MV) No.100/94 and 622/94, that the appellants have filed this

appeal. The contention raised by the counsel for the appellants are that the findings regarding the involvement of the Tempo Van and Maruti car, based on which the Tribunal has passed the impugned award is erroneous. Counsel have also made reference to the scene mahazar and the other documents which were relied on by the Tribunal itself, in support of their respective contentions.

5. The only issue that arise for our consideration is the correctness of the finding of the Tribunal in regard to the involvement of the aforesaid vehicles in the accident and on an anxious consideration of the matter in its entirety, we are satisfied that the award requires to be sustained.

6. The issue as to at whose negligence the accident has occurred has been examined in detail by the Tribunal. The Tribunal has referred to the allegations, the evidence of PWs1 and 2 and Exts.A1 to A23. This included among others, FIR, Vehicle Mahazar, Wound Certificates, MVI Reports of both the vehicles, chargesheet and scene mahazar. These documents, particularly the vehicle report and the scene mahazar indicates

the presence of the vehicles especially the Maruti car whose insurer is the appellant in MFA Nos.668 and 669 of 2001. The witnesses, particularly RW1 the investigating officer, though exonerated the registered owner of the Maruti car from the criminal case, did not deny the involvement of the Maruti car or its presence at the place of occurrence. Added to that the Tribunal made reference to the post mortem certificate, which recorded that the deceased had sustained multiple injuries and that the brain matter was protruding, based on which the Tribunal found force in the contention that the injuries were not hit and run injuries but were of a case of running over. The Investigating Officer was also questioned on this possibility, referring to the nature of the injuries that were noted in the post mortem certificate. It was on the basis of this evidence, that the Tribunal concluded that on the involvement of the Maruti Car and that it was a case of composite negligence of the drivers of the Maruti car and Tempo van. Proceeding further, the Tribunal apportioned the liability in the ratio of 50:50.

7. The evidence available in the case leads to the irresistible

conclusion of the involvement of both the Tempo van and the Maruti Car. We do not find any error in the conclusion drawn by the Tribunal and accordingly we sustain the Award.

8. No other points have been urged. The appeals are accordingly dismissed without any order as to costs.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp